



THE ESSENTIAL GUIDE TO
CONFLICT MINERALS
AND THE DODD FRANK ACT



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I. INTRODUCTION

“Conflict minerals” are identified by *Dodd Frank* as tin, tungsten, tantalum and gold.

Section 1502 of the *Wall Street Reform and Consumer Protection Act*, known as the *Dodd Frank Act*, is a significant law sure to have a wide ranging impact on the jewelry industry. The legislation, passed in 2010, addresses “conflict minerals,” identified as tin, tantalum, tungsten and gold. In particular, the law focuses on conflict minerals that originated in a region of Africa where violence is associated with the production and transportation of these natural resources. Pursuant to *Dodd Frank*, companies that are listed with the Securities and Exchange Commission (SEC), and that use these minerals in the products they manufacture, or “contract to manufacture,” must provide specific information to the public concerning the minerals. To do this, they must conduct an inquiry regarding the source of the minerals. Depending on the results of the inquiry, the companies may also be required to conduct “supply chain due diligence” to determine whether any of the minerals benefitted armed groups in the region, and to report if any of their products are not “conflict free.” Two of the conflict minerals, gold and tungsten, are, of course, very important to the jewelry industry. A third mineral, tin, while less common, is increasingly used in jewelry products.

Products are considered “conflict-free” under Dodd-Frank if they do not contain minerals that directly or indirectly finance or benefit armed groups in the “covered countries:” the Democratic Republic of the Congo, Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia.

Dodd Frank covers conflict minerals that are sourced in the “covered countries”—the Democratic Republic of the Congo (DRC) and each of nine countries that adjoin the DRC. News reports over the past years have documented the millions of victims of systematic violence, including rape, by rebels seeking to unseat the elected government of the DRC. It is hoped that by better controlling the supply of these minerals, the ability of the rebels to victimize the local populations, and to rob their country of its mineral wealth, will be greatly reduced.

As discussed in detail below, many companies are impacted by *Dodd Frank*. **How a company is affected depends on several factors, including whether it is listed with the SEC or, if not, whether it is anywhere in the gold, tungsten or tin supply chain of a company that is listed with the SEC.** Other factors are also important. For example, the impact on refiners and smelters that directly or indirectly supply SEC-listed companies will be substantial since they have been identified in the SEC Rules implementing *Dodd Frank* as a critical point on the supply chain. Businesses such as banks, manufacturers

This Essential Guide is geared to businesses that are not listed with the SEC, but instead supply gold, tungsten or tin, or products containing these minerals, to SEC-listed companies, either directly or indirectly.

and wholesalers that directly or indirectly supply SEC-listed companies will also feel the impact of the new law, although to a different extent. All of these companies will be obliged to establish to their customers' satisfaction that their manufactured products, or supplies of gold, tungsten and tin, have been responsibly sourced. This is explained in more detail in this *Essential Guide*.

While this *Guide* will provide useful information for anyone interested in *Dodd Frank*, it is particularly geared to businesses that are not listed with the SEC, but that are anywhere in the gold, tungsten or tin supply chain of companies that are listed with the SEC. Exactly what a business will have to do to stay in that supply chain will depend on the particular SEC-listed company, and that company's "due diligence" protocols. SEC-listed companies are permitted to design these protocols as they see fit—as long as they comply with certain standards identified by the SEC, as explained below.

In order to better understand the impact of this law on the gold, tungsten and tin sectors in the US, it is important first to understand the impact of *Dodd Frank* on SEC-listed companies. To comply with *Dodd Frank*, these companies will implement supply chain due diligence protocols, and will require their suppliers to adjust their practices to satisfy these protocols. What follows is a quick summary of *Dodd Frank* and how it impacts these SEC-listed companies.

"Due diligence" protocols are measures taken to ensure a responsible supply chain in accordance with accepted standards.



II. THE IMPACT OF *DODD FRANK'S* CONFLICT MINERAL PROVISIONS ON SEC-LISTED COMPANIES

THE MINERAL SUPPLY CHAIN



A. THE CONFLICT MINERAL PROVISIONS OF *DODD FRANK*: A BRIEF SUMMARY

Pursuant to *Dodd Frank*, companies listed with the SEC must perform an inquiry regarding the origin of the conflict minerals that they use, including gold, tungsten and tin, and disclose this information to the SEC on a special form. The only exception to this requirement is if the minerals came from “existing stockpiles” as of January 31, 2013, explained further below. These existing stockpiles are exempted from the requirements of *Dodd Frank*.

If the inquiry determines that the minerals were sourced in any of the covered countries, or if there is reason to believe that the minerals may have been sourced in a covered country, and did not originate in recycled or scrap materials, these companies have additional obligations. Specifically, they must also perform supply chain due diligence to determine the source and chain of custody of their minerals. The due diligence must be based on a separately published national or internationally recognized framework or system. The framework published by the Organization for Economic Co-operation and Development (OECD), titled *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, meets this standard. Because supply chains differ, the OECD also issued two supplements to this basic guidance, one specifically addressing the supply chain for gold, and another addressing the supply chain for tin, tantalum and tungsten, known as the “3Ts.” The use of the OECD framework is not required, but is specifically acknowledged by the SEC as meeting accepted standards. The OECD guidance is summarized below.

Companies that are required by *Dodd Frank* to conduct supply chain due diligence must file a Conflict Minerals Report with the SEC. The Report must include, among other disclosures, a description of the measures taken by the company to exercise due diligence on the source and chain of custody of its minerals, which measures “shall include an independent private sector audit” of the Conflict Minerals Report. If, based on its due diligence, an SEC-listed company determines that some or all of its products are not “DRC Conflict Free,” or may not be “DRC Conflict Free,” it must include that information in the Conflict Minerals Report.

Such a description could cause serious reputational injury; for that reason, many SEC-listed companies are exercising a great deal of caution regarding conflict mineral supplies.

B. OECD'S FIVE-STEP SUPPLY CHAIN DUE DILIGENCE GUIDANCE

As noted above, the only supply chain due diligence system specifically acknowledged by the SEC as being “nationally or internationally recognized,” and thus meeting SEC criteria, is OECD’s *Guidance*. This *Guidance* addresses supply chain risks involving not just the DRC and adjoining countries, but any area of conflict.

It consists of five due diligence steps:

1. Establish strong company management systems, including a company policy to govern the supply chain of minerals from conflict-affected areas.
2. Identify and assess risk in the supply chain that a supplier’s operations could cause harm to people, reputational damage or legal liability. The risk assessment will differ, depending on the mineral involved, and on the supplier’s location on the mineral supply chain. If no risks are identified, no further steps are required. If risks are identified, the next steps must be undertaken.
3. Design and implement a strategy to address identified risks; this could include disengaging with a supplier if necessary.
4. Carry out independent third-party audits of supply chain due diligence where required, based on the supply chain risk assessment. Smelters/refiners would need to undergo this type of audit.
5. Report on the company’s supply chain due diligence

SEC-listed companies may need to disengage with a supplier if the supplier does not correct an identified risk.

As noted, these steps are further detailed by two OECD supplements, one for the 3Ts, and one for gold. These supplements identify the potential risks in the supply chain, and the steps that should be taken to address those risks, depending on the particular mineral and the company’s location on the supply chain.

C. THE OECD SUPPLEMENT ON GOLD

The OECD *Supplement on Gold* provides specific guidance for entities on the gold supply chain and addresses implementation of each of the basic five steps. For example, a “downstream” entity such as a gold manufacturing company is advised to request that suppliers identify upstream gold refiners. If the gold refiners are identified, OECD further recommends that the manufacturer request verification that the refiner has conducted due diligence in accordance with the OECD guidance. If the manufacturer cannot, after good

II. THE IMPACT OF DODD FRANK'S CONFLICT MINERAL PROVISIONS ON SEC-LISTED COMPANIES, *continues*

faith efforts, identify the refiners, a plan should be devised that will eventually enable the manufacturer to do so. Regarding the supply chain risk assessment, OECD recommends, among other things, that the manufacturer obtain preliminary evidence of the refiner's due diligence to see whether it has identified red flags in its supply chain. If no risks are identified, no further steps are required. If risks are identified, then the manufacturer is advised to develop a strategy to address the risks. This would include, among other things depending on the identified risks, that findings be reported to senior management, outlining the actual and potential risks. The manufacturer should then adopt a risk management plan that outlines its steps to mitigate the identified risks.

D. THE OECD SUPPLEMENT ON TIN, TANTALUM AND TUNGSTEN

The OECD *Supplement on Tin, Tantalum and Tungsten* takes a similar approach. For example, it recommends that downstream companies, such as tungsten or tin suppliers, introduce a supply chain transparency system. This would allow the identification of smelters in the companies' supply chains, and the collection of specific information regarding minerals from "red flag locations of mineral origin and transit." Red flags include that the minerals originated from, or have been transported via a conflict-affected or high-risk area. OECD further recommends that companies assess the due diligence practices of their smelters. If a company finds it difficult to identify the smelters, OECD recommends, among other solutions, that the company identify through industry validation schemes (see below) the smelters that meet the requirements of its Guidance, and source from those smelters. Further steps include elements that are similar to the *Supplement on Gold*, including that the findings regarding risks be reported to senior management, and that companies adopt a risk management plan.

The OECD's Guidance and Supplements can be found at <http://www.oecd.org/fr/daf/inv/mne/mining.htm>.

E. INDUSTRY INITIATIVES TO FACILITATE COMPLIANCE WITH OECD'S SUPPLY CHAIN DUE DILIGENCE GUIDANCE

In order to meet its obligations, SEC-listed companies are likely to implement the OECD's supply chain due diligence guidance, summarized above. They are also likely to rely on various industry validation schemes to help them set standards and implement their required due diligence. These include:

- *The World Gold Council*. The World Gold Council is a promotion organization for the gold industry. Its "Conflict Free Gold Standard" was developed for mining companies that extract gold. Those that follow it can demonstrate compliance with OECD *Guidance*. Extraction companies must receive an independent third party assurance that their due dili-

gence conforms to this standard. Sourcing gold, either directly or indirectly, from an entity that adheres to the “Conflict Free Gold Standard” will help companies comply with OECD requirements.

- *The London Bullion Market Association’s Good Delivery List for Gold Refiners.* The LBMA is the international trade association that represents the wholesale market for gold and silver and designates a list of refiners that are accredited by the LBMA as having “Good Delivery” status. Good Delivery status requires that gold refiners comply with the LBMA’s “Responsible Gold Guidance,” and be granted accreditation pursuant to an independent third party audit. Sourcing gold, either directly or indirectly, from a refiner on the Good Delivery list will help companies satisfy OECD due diligence requirements. There are currently approximately 63 gold refiners in 26 countries on the “Good Delivery” list. For more information see “Responsible Gold Guidance” and the current LBMA “Good Delivery” gold refinery list at www.lbma.org.uk.
- *Electronic Industry Citizenship Coalition/Global e-Sustainability Initiative for Conflict Free Smelters and Refiners.* EICC-GeSI is a non-profit initiative to promote responsible sourcing in the global electronics supply chain. Each of the conflict minerals—gold and the 3Ts—is used in electronics products. EICC-GeSI published a validation scheme; smelters and refiners that comply with its standards are validated pursuant to an independent third party audit, and will be placed on its “Conflict Free Smelter List.” Companies that choose to source their gold, tungsten or tin, either directly or indirectly, from a smelter/refiner on this list will be in compliance with their own due diligence requirements. There are currently approximately twelve refiners in six countries on the Conflict Free list for gold. The Conflict Free lists for tin and tungsten smelters are in development, expected in 2013. For more information see the EICC-GeSI audit protocol for gold refiners and the conflict-free smelter list at www.conflictreesmelter.org.
- *Responsible Jewellery Council’s Chain-of-Custody Standard.* RJC is an international organization whose members are committed to promoting responsible and ethical human rights, social and environmental practices in the jewelry supply chain, from mine to retail. Members are audited by independent third parties to verify their conformance with the RJC Code of Practices. Members may also seek certification that they comply with RJC’s Chain of Custody (C-o-C) Standard for precious metals. Sourcing gold, either directly or indirectly, from

II. THE IMPACT OF *DODD FRANK'S* CONFLICT MINERAL PROVISIONS ON SEC-LISTED COMPANIES, *continues*

RJC-certified businesses could help companies satisfy their own due diligence obligations. For more information see the “Chain of Custody Certification” at www.responsiblejewellery.com.

F. A NOTE ABOUT CONFLICT MINERALS FROM EXISTING STOCKPILES AND FROM RECYCLED AND SCRAP SOURCES

The SEC Rules provide an alternative treatment for conflict minerals, including gold, tungsten and tin, from “existing stockpiles,” as of January 31, 2013, or from “recycled or scrap” sources.

Existing stockpiles of the four conflict minerals, which can be verified as produced before January 31, 2013, are excluded from all the requirements of *Dodd Frank*. To qualify as an existing stockpile, the mineral must have been out of the covered countries by that date, or, if still in a covered country, must have been smelted or fully refined by that date. While the minerals in these stockpiles may once have financed armed groups, it is unlikely that they could provide further benefit, according to the SEC. Note that the OECD *Guidance* provides an earlier date for existing gold stocks—January 1, 2012—than does the SEC, and uses the term “Grandfathered Stocks” to describe them. Ask your business partner which date to apply.

Gold, tungsten and tin from recycled and scrap sources also receive an alternative treatment by the SEC Rules. This treatment recognizes that armed groups in the covered countries are financed by the extraction and transport of newly mined minerals, not by the use of recycled or scrap minerals. According to the Rules, SEC-listed companies must conduct an inquiry as to origin to determine whether their minerals originated from recycled or scrap sources. They must disclose this inquiry and the results to the SEC on a special form, referenced above. If this inquiry determines that, in fact, the minerals originated from verifiable recycled or scrap sources, supply chain due diligence regarding source is not required and there is no need to submit a Conflict Minerals Report. **Products made from recycled or scrap minerals may be described as conflict free.**

Recycled gold is addressed in the OECD *Guidance*, insofar as it is a potential means of laundering gold in order to hide its origin. OECD recommends basic “Know Your Counterparty” (KYC) procedures regarding this material, such as is those required by anti-money laundering programs based on the U.S.A. PATRIOT Act. KYC procedures include identification of parties, including acquiring government-issued identification and monitoring of transactions for “red flags” of risk.

III. THE IMPACT OF *DODD FRANK* ON NON-SEC-LISTED BUSINESSES IN THE GOLD, TUNGSTEN AND TIN SUPPLY CHAINS

As noted above, only SEC-listed companies are directly covered by *Dodd Frank*. The number of such companies in the jewelry industry is not large, but those few that are registered with the SEC do a sizeable portion of the business in the jewelry industry. These companies, which include manufacturers and retailers, deal with hundreds of suppliers that sell products containing gold, tungsten or tin, or use those minerals in the products they provide. **SEC-listed companies will not be able to fulfill their obligations under *Dodd Frank* without the cooperation of each of the businesses in their entire gold, tungsten and tin supply chains.**

Section 1502 of *Dodd Frank* only covers companies that are listed with the SEC. Nonetheless, any business that sells gold, tungsten or tin, or products containing those minerals, that is anywhere in the supply chain of a covered company could be affected by the law.

SEC-listed companies are likely to ask their direct suppliers to provide information about the source of gold, tungsten or tin. In some instances, the direct suppliers may be asked to certify and independently audit that these supplies are “conflict free,” meaning that they did not directly or indirectly finance or benefit armed groups in the covered countries. Or, they may be asked to certify and independently audit that the materials came from “existing stockpiles,” “grandfathered stocks” or from scrap or recycled sources, as these are afforded special treatment by *Dodd Frank*. **To comply, direct suppliers of SEC-listed companies may be required to make similar requests of their own suppliers, and so on up the supply chain.** The ability to provide supply chain assurances is likely to be a condition of continuing to do business with any SEC-listed company, and with any company in the supply chain of an SEC-listed company.

Thus, *Dodd Frank* may appear on its face to affect relatively few entities, but it will actually place significant obligations on many businesses in the gold, tungsten and tin supply chains. These businesses will likely be faced with an array of challenging questions, either from an SEC-listed company if it is a direct supplier, or from a customer that is in the supply chain of an SEC-listed company. While these questions will be based on *Dodd Frank*, they may not be consistent throughout the industry, as each SEC-listed company will reach its own determination as to how to best comply with the law. Questions may include:

- Can the supplier represent that its gold, tungsten or tin, or products containing those minerals, are conflict free, based on accepted due diligence standards?
- What due diligence standards did the supplier use to ensure non-conflict gold, tungsten or tin?
- Can the supplier certify that its gold, tungsten or tin is not from a conflict region?
- Has the supplier obtained an independent third party audit of its conflict free assurances or certifications?

III. THE IMPACT OF *DODD FRANK* ON NON-SEC-LISTED BUSINESSES IN THE GOLD, TUNGSTEN AND TIN SUPPLY CHAINS, *continues*

- Which refiners or smelters were used to process the minerals?
- What chain of custody due diligence standards did the smelter/refiner use to certify non-conflict gold, tungsten or tin?
- Did the materials originate from verifiable scrap or recycled supplies?
- Were the materials from verifiable “existing stockpiles” or “grandfathered stocks” prior to a specific date supplied by your customer?

You will need to take certain steps, more fully described below, in order to answer these questions and thus continue to do business with entities in the supply chain of an SEC-listed company.



IV. PRACTICAL STEPS FOR SUPPLIERS: MEETING CONFLICT FREE STANDARDS

This section is designed to help suppliers by recommending practical steps they can take to answer the questions posed above and to provide required assurances, enabling them to continue current business relationships

and enter new ones. As noted earlier, the steps will depend greatly on the inquiries of the particular SEC-listed company. The four examples at the end of this section will illustrate the range of what might be required. Here are some suggested steps to help a supplier meet conflict free standards:

Communicate with your customers to find out what they require regarding conflict minerals. Then, communicate these requirements to your suppliers.

- Communicate with your customers to determine what they need from you regarding your conflict minerals. Once you know what is needed, communicate these requirements to your own suppliers.
- Implement due diligence procedures, such as OECD's, for your supply chains, so you have a detailed understanding of the sources of your gold, tin and tungsten. This should include, among other things, strong management systems and a risk assessment, as previously described. (See page 5.)
- In particular, wherever possible, ascertain the refiner or smelter source of the materials.
- Source from suppliers that meet accepted supply chain due diligence standards, such as those published by the OECD, and that obtain independent third party audits against those standards, to ensure that minerals did not fund conflict.
- Independently audit your own sourcing practices to ensure they meet the standards applicable to the supply chain due diligence system you have implemented.
- If you are a smelter or refiner, obtain a recognized "conflict free" certification or "good delivery" accreditation, or implement supply chain due diligence pursuant to OECD guidance.
- Carefully manage inventory; establish non-conflict sources of supply and segregate materials as necessary.
- Require and provide necessary assurances on commercial documents, such as invoices.
- Based on the above, certify that all gold, tungsten or tin is supplied from conflict free sources.

IV. PRACTICAL STEPS FOR SUPPLIERS: MEETING CONFLICT FREE STANDARDS, *continues*

Some examples:

1. *A gold refiner, or tungsten or tin smelter, that is in the supply chain of an SEC-listed company.*

Refiners and smelters have been identified as critical points on the supply chain because it is nearly impossible to trace minerals to their origin after they have been processed by smelting or refining. For that reason, the obligations placed on smelters/refiners by their customers will be significant. Remember that conflict minerals from verifiable recycled or scrap sources, or from “existing stockpiles,” are afforded special treatment by the SEC Rules. Thus, regardless of which approach is best for a particular smelter/refiner, if its tin, tungsten or gold is derived only from recycled or scrap sources, or from existing stockpiles, this will likely need to be carefully established, independently audited and certified.

The smelter/refiner in this example should first communicate with its gold, tungsten or tin customers to find out what they require, and then, based on those communications, choose a solution from the selection presented in the bullets below, or any others required by your customer.

- Comply with LBMA’s *Responsible Gold Guidance* standards. This will require a supply chain due diligence program based on *OECD Guidance*, including a risk assessment. Compliance with the LBMA standards requires an independent third-party audit of supply chain due diligence.

OR

- Seek designation as an EICC-GeSI “Conflict Free” smelter/refiner. This requires supply chain due diligence based on *OECD Guidance*, including a risk assessment and an independent third-party audit.

OR

- Independently audit and certify that all gold, tungsten or tin supplies are conflict free in accordance with OECD’s *Guidance*, including the *Supplement on Tin, Tantalum and Tungsten* or the *Supplement on Gold*. This will require a supply chain due diligence program, including a risk assessment.

OR

- Seek certification as a refiner member of RJC. This requires adherence to RJC’s Code of Practices, applicable to a wide range of issues beyond gold supply chains, and ensures that

gold supplies are certified as conflict free. RJC members can also certify and independently audit that all gold supplies are conflict free in accordance with RJC's Chain of Custody Standard for precious metals.

OR

- Source all gold from mines that comply with the World Gold Council's Conflict Free Standard.

2. A gold manufacturer or wholesaler that is in the direct or indirect supply chain of an SEC-listed company.

Practical guidance for these companies depends on the requirements of any customers that are SEC-listed companies. For that reason first communicate with your customers to find out what they need. Then, if necessary, take these or any other steps required by your customers:

- Certify and independently audit that all gold supplied is from:
 - ✓ Refiners that have taken one of the steps described in Example One above, have been audited, and can certify their supplies as conflict free; OR
 - ✓ Other suppliers, such as banks, metals trading companies, manufacturers or subcontractors that certify and independently audit:
 - ◆ That all supplies are sourced, either directly or indirectly, from refiners that have taken one of the steps described in Example One above; or,
 - ◆ That all supplies are conflict free based on the OECD due diligence Guidance or RJC's Chain of Custody Standard for precious metals.

OR

- Certify and independently audit that all gold supplies are conflict free, in accordance with OECD's *Due Diligence Guidance*, including the *Supplement on Gold*, or RJC's *Chain of Custody Standard for Precious Metals*.

IV. PRACTICAL STEPS FOR SUPPLIERS: MEETING CONFLICT FREE STANDARDS, *continues*

3. A tin or tungsten manufacturer or wholesaler that is in the direct or indirect supply chain of an SEC-listed company.

Practical guidance for these companies depends on the requirements of any customers that are SEC-listed companies. For that reason first communicate with your customers to find out what they need. Then, if necessary, take these or any other steps required by your customers:

- Certify and independently audit that all tin or tungsten supplied is, directly or indirectly, from:
 - ✓ Smelters that you can identify and that are listed on the EICC-GeSI conflict free smelter list, OR
 - ✓ Smelters or other suppliers, such as metals trading companies, that certify and independently audit that all supplies are conflict free based on the OECD *Guidance*, including the supplement on the 3Ts.

OR

- Certify and independently audit that all tin or tungsten supplies are conflict free, in accordance with OECD's Due Diligence Guidance and Supplement on the 3Ts.



4. Any supplier of scrap or recycled gold, or “existing stockpiles” of gold (or products made from scrap or recycled gold, or from “existing stockpiles” of gold).

Note that recycled material has been identified by the OECD as a potential means of laundering gold that was mined in conflict-affected and high-risk areas in order to hide its origin. In some circumstances enhanced scrutiny may thus be required for this material. Practical guidance for these companies depends on the demands that may be made by customers that are SEC-listed companies. As with the prior examples, first communicate with your customers to find out what they need. Then, if necessary, do one of the following, or take any other steps required by your customer:

- Independently audit and certify that all scrap and recycled gold is identifiable as originating from your own production and supply. For example, the gold is returned product from customers, faulty inventory, or scrap and waste from manufacturing. OR,
- Certify and independently audit that all scrap and recycled gold is acquired according to procedures that require you to collect identity information from sellers and monitor transactions. Many jewelers already implement these “Know Your Counterparty” procedures pursuant to U.S.A. PATRIOT Act anti-money laundering obligations . OR,
- Certify and independently audit that all supplies are from “existing stockpiles” prior to January 31, 2013, or other date provided by your customer. OR,
- Certify and independently audit that all gold supplies are conflict free, in accordance with OECD’s *Due Diligence Guidance and Supplement on Gold* or RJC’s *Chain of Custody Standard for Precious Metals*.

A. A NOTE ABOUT AUDITS

As is clear from the examples above, businesses will very likely be required to audit their sourcing and inventory systems to meet their customers’ needs. The results of the audit, or a certification that such audits have been performed, will probably have to be provided to any customer that is in the direct or indirect supply chain of an SEC-listed company. This is a “process” audit, as opposed to a financial audit, and can be conducted by any number of accredited auditors. Some customers may be able to provide you with a list. It has been estimated that these audits, depending on the complexity of the business, should cost in the region of \$1,000 to \$2,000 per day.

V. CONCLUSION

This Essential Guide serves as a summary of the impact of *Dodd Frank* on the supply chain for gold, tungsten and tin in the jewelry industry. It additionally suggests the steps that may be needed to supply an SEC-listed company, or a company in the indirect supply chain of an SEC-listed company. You may have to add certain procedures to your business practices in order to continue to do business with these companies. It is important that you frequently communicate with your business partners to understand the requirements of the companies you supply in order to tailor your practices to their needs.



VI. FAQs

1. I understand that *Dodd Frank* only applies to companies that are listed with the SEC, such as public companies. I'm a wholesaler of jewelry that contains gold but am not listed with the SEC. Does *Dodd Frank* have anything to do with my company?

Yes, but only if you are anywhere in the supply chain of an SEC-listed company, either directly or indirectly. In order for the SEC-listed company to comply with its own supply chain due diligence obligations it will need the participation of its direct and indirect suppliers. This means that you may be required to certify that the gold you sell is conflict free. On the other hand, if you are not in the supply chain of an SEC-listed company then, no, *Dodd Frank* does not apply to you.

2. My company refines gold. What do I need to do to continue to supply my customers?

If you supply an SEC-listed company, either directly or indirectly, it is very likely that you will need to implement supply chain due diligence based on OECD's five-part *Guidance* and *Supplement on Gold*, and obtain an independent third party audit to confirm that your business practices adhere to the Guidance. Or, you might be required to comply with LBMA's *Responsible Gold Guidance* or be certified by EECI-GeSI as a "Conflict Free" smelter.

3. What is meant by "Supply Chain Due Diligence?"

Dodd Frank requires that suppliers of conflict minerals anywhere in the supply chain of an SEC-listed company put steps into place to ensure that their minerals did not originate in any of the covered countries, or, if they did, they did not fund conflict.

4. Are recycled or scrap minerals treated differently than newly mined minerals by *Dodd Frank*?

Yes. After an inquiry an SEC-listed company may determine that the conflict minerals that it uses originated from recycled or scrap supplies. In that case, the company is not required to perform supply chain due diligence or file a Conflict Minerals Report with the SEC. The company is required, however, to file a special form with the SEC and report on their inquiry. If you are a supplier of recycled or scrap material, you will have to establish the origin of your minerals to the satisfaction of your customer.

5. Do the SEC Rules include any exemptions for "existing stockpiles" of conflict minerals?

Yes. A conflict mineral is exempted by the SEC Rules if, by January 31, 2013, the mineral can be verified as being fully smelted or refined, or, by that date, is located outside the covered countries. While these minerals may have financed conflict at some point, once smelted/refined or outside the region it is unlikely that they

VI. FAQs, *continues*

can provide any further benefit to armed groups. For this reason, these minerals qualify for an “existing stockpile” exemption. If you are supplying minerals that are from existing stockpiles you will have to substantiate the date to the satisfaction of your customer. Note that the OECD *Guidance* uses a different date, January 1, 2012, for what it describes as “grandfathered stocks.” You may thus be asked to substantiate this earlier date.

6. I manufacture gold jewelry. One of my customers, Acme, is a wholesaler that directly supplies an SEC-listed company. What do I have to do?

First, talk to Acme and find out what they require, based on their communications with the SEC-listed company that is their customer. For Acme it is very likely that you will need to obtain gold from LBMA “Good Delivery” sources or EEIC-GeSI “Conflict Free” smelters, or from other sources, such as banks, that are compliant with OECD supply chain due diligence guidance. Or, you could simply use recycled gold, or gold from existing stockpiles, if you are able to verify that representation. You will also need careful inventory controls to make sure that the supplies and products that conform to supply chain due diligence standards are segregated from other sources. Other requirements may include the implementation of your own supply chain due diligence program, certification that the gold is conflict free, and independent third party audits.

7. I supply gold-plated jewelry that contains very small amounts of gold in relation to the other materials in the jewelry. Do I need to comply with these rules?

Yes, the *Dodd Frank* rules do not apply any minimum quantity to the materials involved. So if you supply gold-plated products, or products with metal alloys which contain tin, tungsten or tantalum, even in small amounts, you may have to follow these procedures.

8. I source my gold jewelry from manufacturers and suppliers outside of the U.S. Do these suppliers also have to provide me with assurances regarding their supplies?

Yes, the rules apply to the supply chains of gold and the 3Ts irrespective of country of origin. If you source gold, tin or tungsten in any form—as components, settings, findings or finished products—your customer may require you to get detailed information from your overseas suppliers about source.

VII. GLOSSARY

3Ts The shorthand used for “tin, tungsten and tantalum,” three of the four conflict minerals designated by *Dodd Frank*. The fourth conflict mineral is gold.

Conflict Free Products are considered by *Dodd Frank* to be “DRC conflict free” if they do not contain minerals that directly or indirectly finance or benefit armed groups in the covered countries.

“Conflict Free” Smelter A designation offered by EEIC-GeSI indicating that a smelter or refiner is compliant with the organization’s supply chain due diligence standards. EEIC-GeSI maintains a list of conflict free smelters and refiners.

Conflict-Free Gold Standard This standard was developed by the World Gold Council to demonstrate that gold has been extracted in a manner that does not fuel conflict or abuse human rights. Extraction companies must receive a third party assurance of due diligence to show conformance to the Standard.

Conflict Minerals For purposes of *Dodd Frank*, the “conflict minerals” are tin, tantalum, tungsten and gold.

Conflict Minerals Report This is a report that SEC-listed companies must file if they use conflict minerals in the products that they manufacture or “contract to manufacture,” and if their minerals originated in a covered country (or if there is reason to believe that they may have originated in a covered country), and did not come from recycled or scrap supplies. The Report must include a description of any of a company’s products that are not “DRC conflict free.”

Contract to Manufacture *Dodd Frank* covers SEC-listed companies that use conflict minerals in the products that they manufacture themselves, or that they “contract to manufacture” with third parties. Generally speaking, a company has “contracted to manufacture” if it has some actual influence over the manufacturing of its products. On the other hand, “contract to manufacture” does not include simply affixing the company’s brand or label to a generic product manufactured by a third party.

Covered Countries For purposes of *Dodd Frank*, the covered countries are the Democratic Republic of the Congo, Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia.

VII. GLOSSARY, *continues*

Dodd Frank Shorthand for the *Dodd Frank Wall Street Reform and Consumer Protection Act of 2010*. The conflict minerals provisions are at Section 1502 of the Act.

Due Diligence Generally speaking, this refers to measures taken to ensure responsible supply chains of minerals and to help companies determine sources, furthering respect for human rights and avoiding contributing to conflict through their mineral or metal purchasing decisions and practices.

EEIC-GeSI *Electronic Industry Citizenship Coalition/Global e-Sustainability Initiative*. An initiative developed by a non-profit association to promote responsible sourcing in the global electronics supply chain. Each of the conflict minerals—gold, tin, tungsten and tantalum—are used in electronics products.

Existing Stockpiles Pursuant to *Dodd Frank*, conflict minerals that can be verified as smelted/refined or located outside the covered countries, even if not smelted/refined, by January 31, 2013, are considered to be existing stockpiles and are exempted from the law.

Grandfathered Stocks This term is used by the OECD to describe gold investment products (ingots, bars, coins and grain in sealed containers) with a verifiable date prior to January 1, 2012. The date can be verified through inspection of physical date stamps on products and/or inventory lists.

Good Delivery Refiner An accreditation offered by LBMA, indicating, among other criteria, that a gold refiner complies with the LBMA's *Responsible Gold Guidance* and that this compliance has been supported by an independent third party audit.

Good Delivery List A list of every gold refiner that has received a “Good Delivery” accreditation from LBMA.

LBMA The London Bullion Market Association, the international trade association that represents the wholesale market for gold and silver and designates a list of refiners who are accredited by the LBMA as having “Good Delivery” status.

Manufacture *Dodd Frank* covers SEC-listed companies that use conflict minerals in the products that they “manufacture” or “contract to manufacture” with third parties. For purposes of the Act, the term “manufacture” has its generally understood meaning. An SEC-listed company that only services, maintains or repairs a product containing conflict minerals is not considered to be “manufacturing” the product.

OECD The Organisation for Economic Co-operation and Development. The mission of the Organisation is to promote policies that will improve the economic and social well-being of people around the world. The OECD’s *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, and *Supplements on Gold and the 3Ts* meets the criteria of the SEC for a nationally or internationally recognized supply chain due diligence system or framework.

OECD Supplement on Gold OECD’s supplement to its *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* for the gold supply chain. The supplement itemizes the various risks in the gold supply chain, and suggests the steps that should be taken to address those risks, depending on a particular supplier’s location on the supply chain.

OECD Supplement on Tin, Tantalum and Tungsten OECD’s supplement to its *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* for the tin, tantalum and tungsten supply chains. The supplement itemizes the various risks in the 3T supply chain, and suggests the steps that should be taken to address those risks, depending on the supplier’s location on the supply chain.

Recycled or Scrap Sources According to the SEC, conflict minerals are considered to be from recycled or scrap sources if they are verifiably from recycled metals, which are reclaimed end-user or post-consumer products, or scrap processed metals created during product manufacturing. Recycled metal includes excess, obsolete, defective, and scrap metal materials that contain refined or processed metals that are appropriate to recycle in the production of tin, tantalum, tungsten and/or gold. Minerals that are partially processed, unprocessed, or a byproduct from another ore are not included in the definition of recycled metal.

SEC-Listed Company As used here, an SEC-listed company is any company that is required to file reports with the SEC. These companies are covered by *Dodd Frank*, and are referred to as “issuers” in the SEC Rules. Generally speaking, these are publicly traded companies.





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